

The Odisha Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 978 CUTTACK WEDNESDAY, MAY 16, 2012/BAISAKHA 26, 1934

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 8th May 2012

No. 3604—li/1(BH)-7/1993 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th November 2011 in Industrial Dispute Case No. 113 of 1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Talcher Thermal Power Station, Talcher and its Workmen Shri Akhil Kumar Sahoo and Shri Madhabananda Samal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 113 OF 1994

Dated the 18th November 2011

Present :

S.A.K.Z. Ahamed,
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The General Superintendent,
Talcher Thermal Power Station,
Talcher.

First Party—Management

And

Shri Akhil Kumar Sahoo,
Shri Madhabananda Samal
C/o O.S.E.B. Mens' Congress
Union, T.T.P.S., Talcher.

Second Party—Workmen

Appearances :

A. K. Asthana,
Manager (HR)

... For the First Party— Management

Shri A. K. Sahoo }
Shri M. Samal }

... Second Party— Workmen themselves

AWARD

The matter arises out of a reference made by the Government of Odisha, in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the matter in dispute to this Court vide Order No. 6561—li/1 (BH)-7/1993-LE., dated the 24th May 1994 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the refusal of employment to Shri Akhil Kumar Sahoo and Madhabananda Samal, with effect from the 1st April 1992 by the management of Talcher Thermal Power Station, Talcher is legal and/or justified ? If not, to what relief the workmen are entitled ?”

3. The case of both the second party workmen, in brief, as set out in their statement is that Shri Sahoo was engaged by the first party management on 11-9-1984 and the second party workman Shri Samal was engaged as Departmental Labourer by the first party management on 10-5-1977. Shri Samal was further engaged as casual labourer under P.C.C.M. of Talcher Thermal Power Station (for short T.T.P.S.) on 1-1-1984 on the strength of displaced person. To that effect a certificate was issued to him by the Tahasildar. Both the workmen have asserted that they were active members of T.T.P.S. Workers Union. In that capacity they signed a tripartite settlement on 24-5-1998 for adjustment of casual labourers. It was agreed in principle that the existing vacancies will be filled up from among the workers, working as N.M.R./Work-charged for a minimum period of 400 days as on date of their absorption on regular establishment. After settlement, Shri Samal was directed by the General Superintendent of T.T.P.S. to appear before the Selection Committee on 17-7-1985 for selection to the post of Helper unskilled as departmental candidate. He failed to qualify and continued as casual labourer. Both of them have prayed for their regularisation with full back wages.

4. The first party management in its written statement has stated that except for a short period of employment in the year 1984 and 1985 in respect of Shri Sahoo, the second party workmen were never employed by the first party management. So the question of refusal of employment by the first party management from the 1st April 1992 does not arise. According to the management, Shri Sahoo had worked as casual labourer in the P.C.C.M. from 1-9-1984 to 31-5-1985. Thereafter he has never worked under the first party management. The management has denied the engagement of Shri Samal as casual labourer under the Boiler Division on 10-5-1977. It has alleged that the certificates are manufactured to meet the purpose of this case. Similarly Shri Samal was never engaged as casual labourer under P.C.C.M. on 1-1-1984. The management has admitted regarding the Settlement Dt. 24-5-1985. But according to the management, the present two workmen Shri Sahoo and Shri Samal were neither members of the Union nor signed such settlement. The

management has denied to have given assurance to workmen to absorb them in any permanent post. Further it is stated by the management that the said two workers might have some time worked as contract labourers under the contractor. As regards engagement of juniors to the workmen, the management has denied by saying no person as Gadnayak and A. K. Acharya ever worked under the first party management. Shri Sahoo and Shri Samal are working as contract labourers while rest three workmen named in the pleading of second party workmen are working as N.M.R. workers. On the whole, the plea of the management is that the present two workmen not having been employed by the first party management, their refusal on the alleged date is out of question. Further it is stated that Shri Samal has been undertaking jobs under the first party through contract labourer since 1992 and earning enough money through such contracts. Shri Sahoo had never been in employment under first party management since after 31-5-1985 as stated earlier.

5. It is pertinent to mention here that the Award passed on dated 29-5-1997 by this Court is set aside by the Hon'ble High Court of Odisha, Cuttack vide O.J.C. No. 17768 of 1997 and remanded back to this Court for fresh adjudication. On being heard, from both the sides and on the above pleadings of both the parties, the following issues are settled :

ISSUES

- (i) "Whether the refusal of employment to the members of the second party workmen with effect from the 1st April 1992 by the first party management is legal and/or justified ?
- (ii) If not, to what relief the second party workmen are entitled ?"

6. In the evidence stage, both the second party workmen have been examined from their side as W.W.1 and W.W.2 and proved documents under the cover of Exts. 1 to 7. Similarly, one witness has been examined from the management side and proved the documents under the cover of exts. A to C.

7. After going through the evidence on record, it is manifest that both the workmen witnesses (W.W.1 and W.W.2) have corroborated their facts in details stated by them in the pleading. W.W.1 has proved provident fund subscription sheet under the cover of Ext.1. he has proved his certificate under the cover of Ext.2 series and the Tahasildar certificate under the cover of Ext.3. He has also proved the notice for attending the interview under the cover of Ext.4 and has admitted that there was an interview of casual labourers. He has denied to the suggestion of the management that they were workers of the contractor and not of the management. W.W.2 has deposed that his name finds place in Sl. No. 21 as N.M.R. and he has given his Employees' Provident Fund number. Like W.W.1, he has agreed that the interview was held for the casual labourers. He has denied to the suggestion that he was working under the management till 1985 but not till 1992.

8. On the other hand, the M.W.1 has deposed that both the workmen were engaged as casual labourer since 11-9-1984 till 31-5-1985, during expansion of Project. Due to completion of work of expansion project, all the casual labourers were retrenched. To fill up the requirement, interview was conducted on 17-5-1985 among the retrenched workers to appoint them as N.M.Rs. The

present workmen appeared interview, but could not successful for which they were not appointed. So they are not entitled to get any relief claimed by them in the present case. During the course of hearing, M.W.1 has proved the selection list of the year 1985 under the cover of Ext.A. He has proved the list of total numbers of N.M.Rs. appointed on different times under the cover of Ext.B and also proved the list of N.M.R. workers whose services have been regularised as Helper in the year 1986 under the cover of Ext.C. The management during the course of hearing denied the suggestion of the workmen that there was no difference between labourers and N.M.Rs. M.W.1 has admitted and explained the deduction of Employees' Provident Fund of the workmen and also admitted that there is provision for deduction of Employees Provident Fund for casual workers if they completed 120 days which now 90 days. He has expressed his inability to say if the retrenchment compensation was given to the workmen or not as contract labourers without referring the official records.

9. On careful scrutiny of the evidence of both the sides, it is manifest that the second party workmen to establish their stand have relied on E.P.F. sheet, their personal certificates and certificate of Tahasildar, settlement and the interview. On perusal of Ex.2/a it appears that the workman Akhil Kumar Sahoo has worked for a continuous period of 257 days and the same was executed by the Assistant Executive Engineer, P.C.C.M. sub-division, T.T.P.S. From this, it is crystal clear that the workman Akhil Kumar Sahoo has worked under the management for a continuous period of 257 days and admittedly he has not given any benefits as provided under Section 25-F of the Industrial Disputes Act, 1947. So far the Ext. 2/b is concerned which is executed by the same officer of the T.T.P.S. expansion project. Further it appears from Exts. 2/b and 2/c that the workman Madhabananda Samal was working under the sub-division as casual labourer from 22-5-1978 to 25-6-1978, from 5-7-1978 to 26-10-1978, from 10-5-1977 to 31-7-1977 and from 15-9-1977 to 19-12-1977 under the management. On the above score, the management has explained this fact in his cross-examination that the E.P.F. of casual labourers are also deducted. The admitted fact of both the parties is that both the second party workmen were engaged for more then 240 days. The evidence on record does not disclose that the retrenchment compasation was given to the second party workmen. In the present case, the reference is different. The reference does not deal with the retrenchment, but it is a question to decide whether the refusal of employment of both the workmen with effect from 1-4-1992 by the first party management is legal and/or justified. On perusal of the case record, it is manifest that the second party workmen were engaged as casual labourers in the Plant Colony Civil Maintenance sub-division and in boiler division on 10-5-1977 and 1984 by the first party management and one of them appeared in the interview but failed, is not a ground for refusal of employment as alleged by the first party management. In this connection reliance is placed on a decision of the Hon'ble High Court of Odisha in *Shyam Sundar Rout Vs. Odisha State Road Transport Co-corporation* and others reported in 69 (1990) C.L.T. 357, the view expressed by the division bench of the Hon'ble Court stands confirmed in *Krishna Kumar Dubey Vs. U.P. State Food and Essential Commodities Corporation* and another reported in 1989 (58) F.L.R. 100 wherein the Hon'ble Supreme Court held that a workman who was rendered more than 240 days of work could not be retrenched without a notice of retrenchment and payment of retrenchment compensation. This is a case where the infraction of law entitled to the workmen to reinstatement with full back wages.

10. In view of the findings in the foregoing paragraphs and keeping in view of the principles of natural justice laid down by the Hon'ble High Court and by the Apex Court, the relief that automatically flows is reinstatement of the second party workmen with full back wages. Ample evidence have been led on that score by the second party workmen. They are pre-eminently entitled to the relief of reinstatement with full back wages in the view of the precarious condition they were put to by an unlawful and unjust order of refusal of employment by the first party management with effect from the 1st April 1992.

The reference is answered accordingly.

Dictated and corrected by me.

S.A.K.Z. AHAMED

18-11-2011

Presiding Officer

Labour Court

Bhubaneswar

S.A.K.Z. AHAMED

18-11-2011

Presiding Officer

Labour Court

Bhubaneswar

By order of the Governor

M. R. CHOUDHURY

Under-Secretary to Government